



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov
DNW 02-05

ANTHONY ASQUITH & CO
#28 - 461 COLUMBIA STREET W.
WATERLOO ON N2T 2P5
CANADA

COPY MAILED

FEB 14 2005

OFFICE OF PETITIONS

In re Application of :
Shelp et al. :
Application No. 10/757,733 : DECISION DISMISSING
Filed: 15 January, 2004 : PETITION AS MOOT
Attorney Docket No. 616-76US :

This is a decision in reference to the request for reconsideration, filed on 28 May, 2004, which is treated as a renewed petition under 37 CFR 1.53(e) requesting that the above identified application be accorded a filing date of 16 September, 2003.

The petition is **DISMISSED AS MOOT**.

On 15 January, 2004, an application transmittal sheet consisting of two pages, a specification consisting of 17 pages of written description, four (4) pages containing twelve claims, one (1) page of abstract, four (4) sheets of drawings, were filed, *inter alia*, along with a petition stating that the application had been filed with the USPTO on 16 September, 2003, via Federal Express, and requesting the same as the filing date.

The petition asserted that the application had been filed on 16 September, 2003, but was lost after receipt at the USPTO. The petition was dismissed on 7 May, 2004, because petitioners had not provided persuasive evidence that the application papers were filed on 16 September, 2003. Instead, the application was accorded a filing date of 15 January, 2004, the date that the application papers were received at the USPTO.

On 28 May, 2004, the present request for reconsideration was filed, arguing again that the application should be accorded a filing date of 16 September, 2003.

Petitioners assert that, notwithstanding the showing of record, the application is entitled to a filing date of 16 September,

2003. Specifically, counsel asserts that a Federal Express (hereinafter "FedEx") envelope containing the application papers was deposited with the USPTO on 16 September, 2003.

Upon further review, the original application papers received on 16 September, 2003, have been located in the Office. These application papers were assigned Application No. 10/662,818 and assigned a filing date of 16 September, 2003.

As the original application papers have been located and were assigned the filing date requested by applicant, the petition is dismissed as moot. However, since the original application papers for Application No. 10/757,733 were received on 15 January, 2004, the application filing date for Application No. 10/757,733 will not be changed.

As stated above, the earlier of petitioner's application was received on 16 September, 2003. If petitioner desires not to prosecute the later filed application, No. 10/757,733, petitioner may wish to consider filing a letter of express abandonment under 37 CFR 1.138 in Application No. 10/757,733.

This application is being forwarded to the Office of Initial Patent Examination for further processing with a filing date of 15 January, 2004, using the specification and drawings filed on that date.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3231.



Douglas I. Wood
Senior Petitions Attorney
Office of Petitions